IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2158 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHADRAN PEOPLES COOP BANK LTD

Versus

N P PATEL OR HIS SUCCESSOR IN OFFICE

Appearance:
MR SN SOPARKAR for Petitioner
MR MANISH R BHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE M.S.SHAH

Date of decision: 03/05/2000

ORAL JUDGEMENT (Per A.R. Dave, J.)

Rule. Learned advocate Shri MR Bhatt waives service of Rule for the respondents.

2. The petitioner has challenged by this writ

petition action of the respondents in refusing stay against demand for assessment years 1997-98 and 1998-99. It is the case of the petitioner that the petitioner is entitled to unconditional stay. Alternatively, in view of the decision of Ahmedabad Bench of ITAT in Misc. Application in the case of Gujarat State Cooperative Bank Ltd., the petitioner is entitled to stay of substantial demand for the assessment years 1997-98 and 1998-99. It is pointed out by the petitioner that the respondent has already recovered a sum of Rs.10 lacs against total demand of Rs.22,26,540/- and if the said order of the Tribunal is followed, the petitioner would not be liable to make any further payment. The revenue, however, contends that in the facts and circumstances of the case, no stay is required to be granted.

3. We have heard learned advocate Shri SN Soparkar for the petitioner and learned advocate Shri BB Naik with Shri MR Bhatt for the revenue. In the facts and circumstances of the case, the ends of justice will be served if the following directions are issued :-

(A) The respondents shall compute the tax liability of the petitioner for assessment years 1997-98 and 1998-99 on the basis of the decision of Ahmedabad Bench of ITAT on Misc. Application in the case of Gujarat State Cooperative Bank Ltd.

(B) If the said demand is in excess of an amount of Rs.10 lacs already paid by the petitioner, the petitioner shall pay differential amount within a period of 15 days from the date of intimation from the respondents. However, if on the basis of the said calculation the total amount payable is less than Rs.10 lacs, the petitioner shall not be called upon to make payment. At the same time the respondents are not required to issue any refund at this stage.

(C) If the petitioner pays the differential amount of taxes, if any, within a period of 15 days as directed above, there shall be stay against recovery of further taxes till disposal of appeal by CIT(A) for the assessment years 1997-98 and 1998-99.

These directions are issued without prejudice to the rights and contentions of both the parties and it is expressly made clear that no opinion is expressed by this Court on the merits of the matter.

Rule is accordingly made absolute in the aforesaid terms.

(A.R. Dave, J.)

May 3, 2000 (M.S. Shah, J.)